

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2018

CORAM

THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.No.6056 of 2011

B.Somasundaram

... Petitioner

Vs.

1.The Director of Town and Country Planning,  
Office of the Commissioner of Town  
and Country Planning,  
No.807, Anna Salai, Chennai - 600 032.

2.The Member Secretary,  
The Coimbatore Local Planning Authority,  
Coimbatore.

3.The Coimbatore City Corporation,  
Papanaickenpalayam,  
Coimbatore - 37.

4. The Assistant Commissioner (North),  
The Coimbatore City Corporation,  
Papanaickenpalayam,  
Coimbatore - 37.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue a writ of mandamus, directing the 1<sup>st</sup> respondent to approve the variation of width of the B2-B2 road in Ganapathi Detailed Development Plan from 60 feet to 40 feet as resolved by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents in resolution Nos.270 and 256, dated 11.07.2008 and 21.01.2008 respectively and consequently directing the 3<sup>rd</sup> respondent to grant approval of the building plan and sub-division of the site formed in S.No.393/1 and 393/2, Ganapathi Village, Coimbatore North-Taluk.

For Petitioner : Mr.R.Thangavel

For Respondents : Mr.V.Shanmuga Sundar  
Special Government Pleader for  
R1 and R2  
Mr.K.Mahesh,  
Standing counsel for R3 and R4

## O R D E R

Heard Mr. R.Thangavel, learned counsel for the petitioner and Mr.V.Shanmuga Sundar, learned Special Government Pleader for respondents 1 and 2 and Mr.K.Mahesh, learned Standing counsel for the respondents 3 and 4 and perused the materials available on record.

2. The petitioner has come forward with this writ petition seeking issuance of a writ of mandamus, directing the first respondent to approve the variation of width of the B2-B2 road in Ganapathi Detailed Development Plan from 60 feet to 40 feet as resolved by the respondents 2 and 3 in resolution Nos.270 and 256, dated 11.07.2008 and 21.01.2008 respectively and consequently direct the third respondent to grant approval of the building plan and sub-division of the site formed in S.No.393/1 and 393/2, Ganapathi Village, Coimbatore North-Taluk.

3. The case of the petitioner is that he purchased a land measuring an extent of 93.25 cents in S.Nos. 393/1 and 393/2 situated at Ganapathi Village, Coimbatore North-Taluk, by virtue of registered sale deed, dated 17.11.2006 registered as Document No.6627 of 2006 on the file of the Sub Registrar, Ganapathi Village. Subsequently, he formed house sites in the said land and applied for approval of subdivision of the house sites and also sought for modification of the width of B2-B2 road in Ganapathi Detailed Development plan from 60 feet to 40 feet.

4. The petitioner has further stated that the third respondent vide resolution No.256, dated 21.01.2008, resolved to permit him to form the house sites and conversion of existing B2-B2 23 feet road into 40 feet road by donating 17 feet of the alongside of the 23 feet road. Accordingly, a registered gift deed dated 03.03.2009, was executed.

5. The petitioner would further state that the second respondent inspected the site and also recommended the proposed width of B2-B2 road from 60 feet to 40 feet, by realigning the same and his request will be considered based on the resolution adopted by the respondent. The second respondent vide his resolution No.270, dated 29.9.2008, had resolved to reduce the road from 60 feet to 40 feet, by realigning the same on condition that the petitioner shall develop the 40 feet B2-B2 road and handover the same to the third respondent.

6. The petitioner would claim that on the basis of the resolution of the second respondent, he formed a tar road and erected street lights and handed over the same to the third respondent. Thereafter, the second respondent had forwarded his application to the first respondent for appropriate orders. The

first respondent by communication dated 09.11.2009, sought for report from the second respondent with regard to the advantage and disadvantage in reducing the width of B2-B2 road from 60 feet to 40 feet. According to the petitioner, the second respondent has not sent any remarks, hence, the application was returned to the second respondent on 02.03.2010.

7. The learned counsel for the petitioner would urge that admittedly no acquisition proceedings have been taken place pursuant to the notification issued under Detailed Development Plan and hence the notification shall be deemed to be lapsed under Section 37(2) and 38 of the Tamil Nadu Town and Country Planning Act, 1971. However, the petitioner seeks realignment due to the reason that he already gifted lands in favour of the local body. He would further state that it would suffice, if a suitable direction is given to the respondents to take appropriate action.

8. The learned Special Government Pleader appearing for the respondents submitted that the second respondent in the counter has admitted that the resolution Nos. 256 and 270, dated 21.01.2008 and 11.07.2008, passed by the respondents 2 and 3 respectively and the papers were forwarded to the third respondent. It is further stated that the first respondent has issued a direction to the second respondent, vide letter dated 09.11.2009, thereby seeking the pros and cons in varying and realigning the land as per the request of the petitioner. The second respondent sent his response on 19.2.2010, but, in the meanwhile, the application was returned by the first respondent.

9. In the matter on hand, the fact remains that the petitioner has already gifted his property in favour of the third respondent - Corporation, for forming the 40 feet road and as per the resolution of the respondents 2 and 3 the authorities had decided to reduce the B2-B2 road from 60 feet to 40 feet. It seems that the application of the petitioner was returned by the first respondent for the reason that the second respondent has not submitted his remarks with regard to the reducing the width of the B2-B2 road from 60 feet to 40 feet. It is pertinent to note that assessment of advantage or otherwise due to reduction of B2-B2 road should have preceded the resolutions and gifting of land by the petitioner, now he cannot go back and take a different stand.

10. In the light of the above facts and taking note of the submissions made by the learned counsel on either side, this Court, directs the second respondent to send the file to the first respondent along with his remarks within a period of four weeks from the date of receipt of a copy of this order. On such compliance, the first respondent shall pass appropriate orders

on merits and in accordance with law, within a period of six weeks therefrom.

11. With the above direction, this writ petition is disposed of. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS-)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Director of Town and Country Planning,  
Office of the Commissioner of Town  
and Country Planning,  
No.807, Anna Salai, Chennai - 600 032.
- 2.The Member Secretary,  
The Coimbatore Local Planning Authority,  
Coimbatore.
- 3.The Coimbatore City Corporation,  
Papanaickenpalayam,  
Coimbatore - 37.
4. The Assistant Commissioner (North),  
The Coimbatore City Corporation,  
Papanaickenpalayam,  
Coimbatore - 37.

+1cc to Mr.K.MAGESH, Advocate, S.R.No.49135

+1cc to Mr.M.R.THANGAVEL, Advocate, S.R.No.48717

W.P.No.6056 of 2011

VSN II(CO)  
TR(11/08/2018)

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